VIA ELECTRONIC FILING

May 2, 2019

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Rural Health Care Support Mechanism, WC Docket No. 02-60; Promoting Telehealth in Rural America, WC Docket No. 17-310

Dear Ms. Dortch:

As a committed provider of services supported by the Commission's Rural Health Care ("RHC") Universal Service Support Mechanism, Alaska Communications urges the Commission to revisit the operation of its rural healthcare budget caps, including the $150 million subcap on upfront costs and multi-year funding commitments in the Healthcare Connect Fund ("HCF").

Alaska Communications serves many of the rural healthcare providers in Alaska, including some through the RHC Telecom Program and others through the HCF. In recent years, a growing number of rural healthcare providers ("HCPs") have stopped participating in the Telecom Program, as it has become increasingly difficult to apply the rules of that Program with predictability and certainty in the context of modern telecommunications market dynamics and rate regulation. Some of those HCPs have turned instead to the HCF, despite the HCF's requirement that the applicant pay 35 percent of the cost of supported services, which reduces the affordability of these services for remote Alaskan HCPs with limited resources.

If Funding Year 2017 became the Telecom Program's *annus horribilis*, when demand exceeding the RHC budget conspired with vigorous enforcement of outdated program rules to delay funding commitments in Alaska until well beyond the end of the funding year, then it appears that HCF participants are well along the road to the same fate in Funding Year 2018. In the eleventh month of the funding year, the Universal Service Administrative Company ("USAC") has yet to issue decisions on any meaningful number of applications involving upfront costs or multi-year commitments that are subject to the $150 million subsidiary cap imposed under the 2012 *Healthcare Connect Fund Order*.[1] With demand for these funds apparently exceeding the capped level, once again applicants are facing lengthy funding delays as the Commission and USAC struggle to find an appropriate way forward.

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1 47 C.F.R. § 54.675(a); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, FCC 12-150, 27 FCC Rcd 16678 (2012), at ¶ 190 ("*Healthcare Connect Fund Order*").

Alaska Communications acknowledges the value of the sub-cap in protecting the reasonable expectations of applicants seeking annual support for recurring service charges, especially under the Telecom Program. As the Commission observed in the *Healthcare Connect Fund Order*, the sub-cap "takes into account the need for economic reasonableness and responsible fiscal management of the program," while helping to "prevent large annual fluctuations in program demand."[2] In the experience of Alaska Communications, most applicants, both under the Telecom Program and the HCF, enter into multi-year service contracts of three or more years. Under the Anti-Deficiency Act, multi-year commitments of support for the monthly recurring charges imposed under these contracts are counted against the RHC mechanism's budget in the year that they are made, even if the payments will actually be made in a future funding year.[3] Absent a cap, HCF applicants seeking multi-year commitments could artificially inflate demand, potentially harming other applicants that seek one-year funding commitments, if prorated reductions to those commitments were needed to remain within the overall RHC support mechanism budget.

Alaska Communications recommends therefore that the Commission first commit funds under this sub-cap only for up-front payments of non-recurring charges imposed under multi-year contracts. This more limited application of the cap will help meet the Commission's goal to ensure that "the Fund does not devote an excessive amount of support to large up-front payments for HCP self-construction, which could potentially foreclose HCPs' ability to use the Fund for monthly recurring charges for broadband services."[4] At the same time, Alaska Communications agrees that "$150 million should be sufficient to meet demand for upfront payments" of nonrecurring charges within the context of the other limitations imposed in the *Healthcare Connect Fund Order*.[5]

In years where requests for multi-year commitments of support for recurring service charges exceed the remaining balance under the sub-cap, Alaska Communications recommends that the Commission consider all such requests under its existing process for granting "evergreen" status to multi-year service contracts.[6] While an evergreen contract does not benefit from the certainty of a multi-year funding commitment for recurring service charges, neither does the applicant need to conduct an additional competitive bidding process for the services covered by the contract during the contract term.[7] In such circumstances, support for recurring service charges under the HCF should be committed on an annual basis, as is routinely the case in the Telecom Program today.

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2 *Id.* at ¶ 298.

3 *Id.* at ¶ 298, n.716.

4 *Id.* at ¶ 75.

5 *Id.* at ¶ 190.

6 47 C.F.R. § 54.642(h)(4)(ii)

7 47 C.F.R. § 54.642(h)(4)(i).

Such an approach would effectuate the Commission's guidance in the *Healthcare Connect Fund Order* that:

> If an applicant signs a multi-year contract but funds are no longer available for the funding year for a multi-year commitment, the applicant may choose to simply seek a one-year funding commitment, have the contract designated as "evergreen," and apply for a multiyear funding commitment in the next funding year.[8]

In this way, applicants seeking HCF support for recurring service charges under multiyear contracts will neither be advantaged nor disadvantaged vis-à-vis applicants for similar support under the Telecom Program.

This bifurcated approach is also consistent with the Commission's treatment of up-front costs under the Schools and Libraries Universal Service Support Mechanism ("E-rate"). Under the Commission's suspension of the amortization requirement for up-front costs, now in effect, applicants may receive multi-year funding commitments for up-front costs under a multi-year contract, without amortizing those costs over at least a three-year period, as the E-rate rules would otherwise require.[9]

Of course, the true solution to this issue is for the Commission to grant a further increase to the budget for the RHC program. While the Commission has already increased the budget from $400 million to $571 million to account for twenty years of inflation, and indexed that budget for future inflation, that change is not sufficient. Expanded eligibility of healthcare providers and services, advances in telemedicine capabilities, and increased patient reliance on these services together have already brought demand for RHC support well within sight of that new cap. Alaska Communications urges the Commission, in its upcoming order in these proceedings, either to exempt the Telecom Program from the RHC budget altogether, or to increase the RHC budget further to accommodate the impact of these additional drivers of demand.

Very truly yours,

Leonard Steinberg
Senior Vice President & General Counsel

8 *Healthcare Connect Fund Order* at ¶ 298, n.717.

9 *E-Rate Program Amortization Requirement*, WC Docket No. 19-2, Notice of Proposed Rulemaking and Order, FCC 19-5 (rel. Jan. 31, 2019), at ¶ 12.